Nova Scotia Human Rights Commission

Moving Forward with Human Rights in Nova Scotia: The Path for the Future

November 2002

Human Rights Commission

NOVA SCOTIA

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Introduction

The government of Nova Scotia established the Nova Scotia Human Rights Commission (NSHRC) in 1967 as an independent agency responsible for administering the Nova Scotia Human Rights Act. Since that time, the NSHRC has established a solid foundation for the continuing development and advancement of human rights in the province.

As a government agency with such an important mandate, the NSHRC realizes it must proactively address and respond to changing public attitudes and expectations, continuing advancement in new technologies and the realities of fiscal constraint and government policy priorities. In doing so, the NSHRC must maintain a strategic outlook in its management of people, processes and services, and to take a proactive and informed approach to enacting positive change.

This approach has taken the form of a multi-phased organizational review initiated in the summer of 2000. The first phase of the review, the results of which were first released to the public in February 2001, was designed to identify and clarify the issues surrounding the mandate of the NSHRC and to identify key directions for change. The results of the initial research were then taken out to the public and various stakeholder groups around the province during a series of public consultations and hearings designed to present, review and collect feedback on the issues and options facing the NSHRC. Subsequent phases of the organizational review have used the research and the feedback collected during the public consultation process to identify areas in which to enact change within the NSHRC.

This report is intended to provide the public and various stakeholder groups with further background and detail on the organizational review, key findings received through the public consultation process, through consultation with staff and management of the NSHRC, and some of the key recommendations for change with a commentary on what these changes might mean for the public and other key stakeholder groups.

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Background and Sequence of Events

Public sector organizations around the world are being challenged to work differently - to be more efficient, to maximize the use of resources, to strengthen accountability, to improve service delivery and to increase overall effectiveness. In particular, greater emphasis and attention is being focused on processes and mechanisms that encourage citizen engagement and strengthen overall service delivery.

These trends have led government to consider how best to use existing resources to improve outcomes for citizens and at the same time make the most efficient use of taxpayers' dollars. They have also led governments to re-examine organizational structures.

During the summer of 1999, it was acknowledged that the Commission needed to make significant changes to address concerns about the services it delivered and to be responsive to trends in national human rights. The Commission's caseload had increased almost 400% over the past 20 years and while the organization faced funding constraints and reductions, it remained one of Canada's best-funded commissions on a per capita basis. When this review began, the Commission had a caseload of over 200 cases and formal complaints were taking between two and three years to reach resolution.

In July 2000, the Commission contracted to begin Phase One of what is to be a comprehensive and multi-phased organizational review for the organization. In February 2001, a discussion document, "Moving Forward with Human Rights in Nova Scotia" was released to the public summarizing the research conducted on issues related to the continuing mandate of the Human Rights Commission and outlining several key issues destined for public consultation. This discussion document can be found at http://www.gov.ns.ca/humanrights/pdf/movingfd.pdf.

In the early spring of 2001, a series of public consultations and public hearings were undertaken at a variety of locations and venues across the province. These public sessions were led by Dr. Wanda Thomas Bernard, Dr. Viola Robinson and Dr. Fred Wein and were conducted in ten locations in the province in April and May of 2001. The results of the public consultation process can be found at http://www.gov.ns.ca/humanrights/pdf/hrreview.pdf.

The key issues addressed during these sessions fell into several areas of identified importance to the NSHRC and to the public and other key stakeholders. They included an examination of the Commission's mandate and how it should allocate resources and prioritise activities among its various responsibilities. The public consultation also addressed issues of organizational design and the work processes followed internally, leading to a discussion of alternate models for human rights protection in Nova Scotia.

Key Findings and Highlights – Phase One

An organization's structure should be defined by its mandate and its key strategic goals and priorities. As a result, the goal of an organizational review and design process is to recommend a set of structures and work processes to give staff the tools and direction needed to achieve organizational objectives.

The information collected through Phase One of the organizational review provides a critical foundation to understanding both the mandate and strategic priorities of the Nova Scotia Human Rights Commission and in directing how the organization's structure should be designed to support the achievement of its mandate.

During the public consultation sessions, many different views were expressed about the Human Rights Commission. Many participants in the public consultation process had positive comments with regards to their experience in working with the Commission and there is strong support for the continued existence of the Human Rights Commission and for its mandate to protect and advance human rights in Nova Scotia.

The majority agreed, however, that improvements could be made to the way in which the Commission carried out its mandate, particularly with respect to the time required to process complaints and the large backlog of cases that has accumulated over time.

The key findings and highlights of the public consultation process with respect to the mandate and key priorities of the NSHRC and the organization design and work process improvements for the Commission are outlined below.

Mandate and Key Priorities of the Nova Scotia Human Rights Commission

- *Continue the current mandate.*

The public consultation indicated that the current mandate of the Nova Scotia Human Rights Commission - public education and affirmative action, complaints management, adjudication of complaints, research and policy development - should remain the same. Participants felt that the NSHRC should continue to be the lead organization within government for the promotion and protection of human rights and that an ideal Human Rights Commission would pursue all four of these major activities. Most agreed the Commission currently spends much of its time and resources on managing the complaints process.

- *Focus first on the efficient management of complaints.*

Participants in the consultation indicated that the organization should focus on reducing the backlog of cases and improving current processes to provide more expedient resolution of

complaints. To do so the NSHRC should evaluate and consider various methods by which to streamline the existing intake, investigation and adjudication processes.

- *In the longer run, increase public education and human rights promotion.*

Participants said that when the NSHRC is able to reduce the backlog of cases and to streamline the complaint process, the organization should focus increasingly on the proactive aspects of their mandate - public education and human rights promotion. Further, to expand its role in public education, participants suggested that the NSHRC expand its partnerships with other organizations including universities, schools and other provincial human rights organizations.

Public education and higher visibility for the Human Rights Commission is considered important, along with recommendations that the Commission continue to educate students, the general public and employers in both the public and private sectors on matters of human rights in Nova Scotia.

Organizational Design and Work Process Improvements

- *Streamline the "front end" processes to facilitate more expedient complaints resolution.*

The Commission's procedures for investigating and adjudicating human rights complaints are complex and have not been substantially restructured since the NSHRC was established. Although improvements have been made in the processing of complaints through the establishment of an internal Assessment Team at the Commission, more streamlining is required. This includes improvements to first line intervention efforts, to the processes used to handle an initial inquiry and to initiating the complaint process. The current process was felt to be too bureaucratic, involving too many forms, with some confusion over the appropriate venue for specific complaints.

- *Introduce service standards and time limits related to the activities in each stage of the process.*

Standards, such as limits on the time to respond to a complaint and limits on the time to investigate a complaint, would not only serve to improve the efficiency of processes but may also allow the Commission to establish reasonable expectations for members of the public with a need to access the services of the Human Rights Commission.

- *Expand use of alternative dispute resolution mechanisms such as mediation and conciliation.*

There is a growing interest across Canada in using alternative dispute resolution methods to streamline the adjudication of complaints and improve the quality and efficiency of outcomes for complainants and respondents.

- *Consider a permanent tribunal as a means of reducing the time to resolve Human Rights complaints.*

The discussion document presented the idea of having a permanent tribunal. This idea received some support; however, there was little support for using existing permanent tribunals to serve this function. The advantages of a permanent tribunal may include a quicker processing of cases and more consistency in judgments. The concerns about a permanent tribunal (as opposed to the present arrangement of appointing someone from a list of possibilities for each case) raised the issues of the composition of the tribunal panel, how members would be selected and the possibility of higher costs.

- *In the future, consider a direct-access model.*

A direct access model would cause human rights complaints to go directly to a standing tribunal, bypassing the current procedures followed the NSHRC. In this case, the NSHRC would focus primarily on public education, advocacy and policy development. Under the direct access model, the complainant would be awarded a hearing by the tribunal to (a) initially assess whether there is a valid case to be pursued and (b) subsequently to make a decision in the case. In the instance of a direct access model, it was seen as desirable to establish a panel of several persons, as opposed to an individual.

- *Do not introduce an internal responsibility model.*

An internal responsibility model would shift the onus for the protection of human rights and the resolution of complaints to employer and employee groups through internal responsibility mechanisms. It was felt that the Human Rights Commission represents a more impartial and balanced perspective for complainants.

- *Pursue process improvements or mergers that create efficiencies and synergies, particularly related to support functions.*

These improvements should involve the increased use of technology, a web-based toolkit to provide information and streamline the processing of complaints, and a review of the various roles/positions within the NSHRC with a view to possible redefinition of roles and/or the creation of new positions.

- *Pursue partnerships with educational and research organizations and community groups as a means of expanding the organization's mandate towards public education and research.*

There were many expressions of public support for the Nova Scotia Human Rights Commission and for the work it continues to do in support of human rights in Nova Scotia. Given the need for ongoing and proactive change, the issues raised and the feedback collected were both informative and constructive. This feedback will be used as direct input into subsequent phases of the organizational review and to begin the process of enacting change.

The 'To-Be' HRC

The next steps in the organizational review process for the Nova Scotia Human Rights Commission uses the research and feedback collected during the public and internal consultation process and begins to conceptualize, design and implement change measures that will create the 'To-Be' HRC.

Because there is consensus that the mandate of the Human Rights Commission continues to be valid, the intended changes for the 'To-Be' HRC involve improvements to the way in which the Commission carries out its mandate. These improvements fall into two main categories—those that can be approved and implemented in the short term to increase operating efficiencies and those that require a longer planning horizon.

Initiatives for the short-term are those that do not require either legislative change or additional funding in order to be implemented. These initiatives centre on fundamental, yet straightforward, work process changes; changes that are designed to achieve greater efficiency in complaint processing, particularly at the "front end" and during the initial investigative stages of the complaint process. These changes are possible to implement in the short-term and include improving the complainants' initial interface with the telephone system, improving the walk-in visitor system, providing complainant access to information in a wider variety of locations around the province, streamlining the initial stages of the investigation process to increase processing efficiency and improving the methods and levels of internal communication about ongoing cases within the NSHRC. The introduction of immediate changes will result in early positive benefits to the NSHRC, to complainants and other key stakeholders.

Nova Scotians will receive faster and more efficient service during the initial stages of the complaint process.

The recommendations for longer-term change (that is, those requiring more time to properly plan and implement) also centre on potential improvements to the way in which the NSHRC fulfils its mandate. These recommendations are outlined below.

- *Create a specialized 'intake' role to manage and support the process by which complaints are taken into the system.*

This 'intake' role will be responsible for receiving all contacts that are potential complaints and for the appropriate disposition or routing of inquiries and potential complaints. The core competencies defined for this position will ensure the role is filled with an individual who has solid communications skills, sensitivity

Every Nova Scotian who contacts the NS HRC regardless of where they are calling from will receive consistent

and judgement, conflict analysis/assessment and negotiation skills, and data management and administrative competencies.

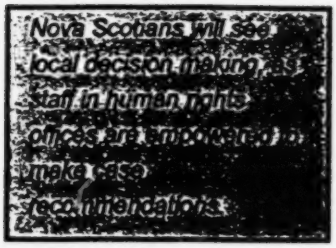
- *Become more responsive earlier in the process through the introduction and adoption of early intervention techniques (that is, interventions that immediately follow intake but precede the formal complaint).*

In the future, offers to conduct conciliation or mediation will become mandatory at the time of inquiry, unless there are clear circumstances where this offer would be inappropriate. It is expected that offers to conduct an intervention will become the norm rather than the exception. Offering interventions more often and earlier in the process requires an increased capacity within the NSHRC to provide mediation and/or conciliation services through the provision of mediation training for human rights officers and the potential introduction of a roster of human rights mediators. It will also mean that intervention as an option will be clearly communicated earlier in the complaint process and that the NSHRC will provide support to complainants to allow them to take advantage of intervention, as a means of resolving complaints.

For cases that proceed to the formal investigation process, an expedient alternative investigation process will be available. This alternative process will be used only when both parties agree to participate. It will include a face-to-face meeting where parties will present information and evidence facilitated by a human rights officer. Subsequent to the investigation meeting, the human rights officer will develop a recommendation within a pre-defined time period. The alternative investigation process will not change any of the decision-making authorities in place for traditional investigation processes but will provide a recommendation in significantly less time.

In addition to the introduction and promotion of early intervention techniques and alternative processes for investigation, the NSHRC will formalize and place time standards on the status review of potential complaints, providing more flexibility in the process and the communication of the time frames associated with each case.

- *Improve accountability by empowering human rights officers across the province to manage their cases.*

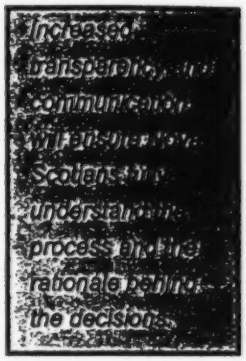


The human rights officers will be structured to work as a 'team' in order to balance workload across the province and ensure the most appropriate service to the client. In the future, the accountability for recommendations on cases would be placed with the appropriate staff in human rights offices, instead of with a centrally located Assessment Team which rarely makes change to staff recommendations. In order to provide staff with efficient and consistent access to

case information, a case management tracking system would be introduced in the province, allowing for the collection and analysis of data to support service delivery. Finally, to ensure that the policies and processes support the mandate of the organization, the NSHRC would introduce a range of client feedback surveys to solicit input and comment.

- *Increase the transparency associated with the investigation and adjudication process.*

To ensure that all parties understand the intent behind each step of the complaint and investigation process, the Human Rights Commission will introduce an "informed consent" form that will be signed prior to each step. These forms will allow the parties to demonstrate that they have been informed of the intent and the specific steps of the process, and that they have agreed to participate. The Human Rights Commission will also formally communicate the decisions made at each step of the process, providing more background and rationale for decisions.



To enhance transparency to the public at large, the Human Rights Commission intends to broaden the range of performance and outcome measures for the organization and publish these performance expectations.

- *Improve the efficiency of processes by introducing enabling technology to more efficiently support the complaints management process.*

In the 'To-Be' HRC, technology will be used more extensively to support the processes of the Commission. For example, standardized electronic forms will be made available through a directory-based system on the network and access to the network will be expanded to the regional human rights offices. In the long term, more sophisticated enhancements will be considered, including the introduction of a case management or contact management technology and fully electronic case files.

- *Improve the consistency of decision-making by decreasing the size of the group of Commissioners participating in the decision-making process.*

This might be accomplished through the formal appointment of a fewer number of Commissioners or through the creation of a 'subcommittee' of Commissioners for this purpose.

- *Increase public education by actively forging alliances and partnerships with other organizations whose mandate is focused on human rights related issues or whose mandate can allow them to support human rights promotion and protection.*

These organizations might include universities, other equity-focused government or non-government agencies for the identification of emerging human rights issues or for input and consultation related to policy development and business or private sector organizations for the purpose of supporting research, training or the general promotion of human rights.

- *Increase the capacity to promote human rights by creating a policy function within the NSHRC.*

The policy role will be charged with policy development and with supporting the broader promotion of human rights. It will be charged with monitoring human rights nationally and internationally to identify trends, developing human rights policy and monitoring changes in human rights processes across the country to identify opportunities to improve the process in Nova Scotia.

What This Means For You

The continuation of this organizational review process, the implementation of changes to the structure and work processes of the Nova Scotia Human Rights Commission will result in an organization that continues to focus on protecting and advancing human rights in Nova Scotia. The Commission will also retain its priority on the investigation and adjudication of complaints received from complainants throughout the province of Nova Scotia.

Although the mandate will remain unaltered, the way in which the Commission addresses the complaint and adjudication will change. Some of these changes will happen quickly, while others will require more time. The more immediate goals are to reduce the current backlog of cases, establish and communicate service standards, and increase efficiency throughout the complaint and adjudication process.

The Commission will continue to study longer-term ways by which to increase the speed and efficiency of the complaint process, including the possible introduction of alternative dispute resolution mechanisms, a direct-access model and the possible establishment of a permanent tribunal by which to reduce the time associated with reviewing and resolving human rights complaints. Also in the longer-term the Commission will strive to partner with other community organizations in order to extend its reach and to expand the organization's mandate in public education and research.

The overall objective is to better protect and advance the human rights of Nova Scotia residents and to increase the efficiency and effectiveness of a complaint resolution process.